

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GARY MICHAEL LOW

Plaintiff,

v.

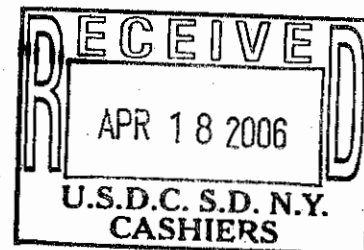
NATIONAL TRANSPORTATION SAFETY BOARD  
490 L'Enfant Plaza, SW  
Washington, DC 20594

Defendant.

06 CV 2990

Civil Action No. \_\_\_\_\_

COMPLAINT



COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant National Transportation Safety Board.

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and the Air Transportation Safety and Systems Stabilization Act, Public Law No. 107-42, 115 Stat. 230 (the "Act"), Section 408(b)(3). Venue lies in this district under the Act, Section 408(b)(3).

3. Plaintiff Gary Michael Low, as Representative of the Estate of his daughter, Sara Elizabeth Low, and on behalf of the individual beneficiaries of her estate, Gary Michael Low, Bobbie Jean Low and Rebecca Alyson Low, is a plaintiff in *In Re: September 11 Litigation*, C.A. No. 21 MC 97 (AKH).

4. Defendant National Transportation Safety Board ("NTSB") is an independent administrative agency of the government of the United States. NTSB is an agency within the meaning of 5 U.S.C. § 552 (e).

Plaintiffs' FOIA Request and Defendant's Failure to Respond

5. By letter to defendant dated September 24, 2004, Mary Schiavo, attorney for plaintiff, submitted a FOIA request for information concerning four aircraft hijacked on September 11, 2001. The request sought copies of flight data recorders on American Airlines Flight 77 and United Airlines Flight 93, cockpit voice runs on Flight 93, twelve NTSB reports cited in the final report of the National Commission on Terrorist Attacks upon the United States ("9/11 Commission") and other materials. The complete administrative record is attached hereto as **Exhibit A**.

6. On October 15, 2004, defendant responded to plaintiff's September 24 request in four separate letters corresponding to individual hijacked flights. Defendant assigned reference numbers to each request (FOIA #20050013-20050016) and stated that "[y]our request will be processed in accordance with your inquiry." Plaintiff has received no further communication from defendant.

7. Plaintiff's counsel contacted defendant telephonically on multiple occasions in February 2006, leaving two voice messages with defendant's FOIA office. On February 23, 2006, Michael Elsner, an attorney also representing plaintiffs in *In Re: September 11 Litigation*, wrote to Ms. Lyn Donaldson, Chief FOIA Officer at NTSB, inquiring about the status of the pending request. Despite these attempts, defendant has not contacted plaintiff.

8. Although plaintiff initiated the FOIA request nearly eighteen months ago, defendant has failed to fulfill the minimum requirements set forth in 5 U.S.C. § 552. Defendant has not rendered a determination or even informed plaintiff whether responsive records exist within the twenty (20) working days afforded by law. Absent such a determination, plaintiff lacks the recourse of an administrative appeal pursuant to 5 U.S.C. § 552(a)(6)(A)(i).

9. Plaintiff has exhausted all remedies vis-à-vis defendant.
10. Defendant has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

- A. order defendant to disclose the requested records in their entireties and make copies available to plaintiff;
- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Dated: New York, New York  
April 18, 2006

Respectfully submitted,

HANLY CONROY BIERSTEIN SHERIDAN  
FISHER & HAYES, LLP

By: 

Paul J. Hanly, Jr., Esq. (PH-5486)

Jayne Conroy, Esq. (JC-8611)

Andrea Bierstein (AB-4618)

112 Madison Avenue

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-and-

Michael E. Elsner, Esquire (ME-8337)  
Ronald L. Motley, Esquire  
Don Migliori, Esquire  
Jodi Westbrook Flowers, Esquire  
Mary Schiavo, Esquire  
Motley Rice LLC  
28 Bridgeside Boulevard  
Post Office Box 1792  
Mount Pleasant, SC 29465  
Telephone: (843) 216-9000

**ATTORNEYS FOR PLAINTIFF**

## **Exhibit A**

118

# MOTLEY RICE

ATTORNEYS  
AT LAW  
LLC

RONALD L. MOTLEY (SC)  
JOSEPH E. RICE (SC)  
ANN K. RUTTER (SC, TX)  
JOHN J. MCCONNELL, JR.  
(RI, MA, SC, DC)  
WILLIAM H. NARHOLD (CT)  
ALLARD A. ALLETON III (SC)  
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EDWARD B. COTTINGHAM JR. (SC)  
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FREDERICK C. BAKER (SC, NY)  
FRED THOMPSON, III (SC)  
JOHN WESTBROOK FLOWERS (SC)  
PAUL J. DOONUTTLE (SC)  
DONALD A. MUGLIORI (RI, MA, MN)  
ANNE MCGINNIS KEARSE (SC)  
JEFFREY S. THOMPSON (TX)  
MARY F. SCHIARO (MD, DC, MD)  
SAMUEL B. COTHMAN, JR. (SC, NC)  
(GERMAN COUNSEL)  
MILES LONONQUIT (SC)  
J. TERRY POOLE (SC)  
M. ERIC BOSTER (SC)  
LAURIE J. LOVELAND (1948-2003)  
J. B. HARRIS (FL, DC)  
DONNI E. YOUNG (LA)  
ROBERT T. HARRIS (RI, PA)  
SHERYL A. MOORE (SC, VA)  
V. BRIAN BEYON (SC)  
JAMES M. HUGHES (SC)  
RICHIE D. KLOK  
(SC, DC, LA, TX, NM)  
FREDERICK J. JERRE (SC)  
NORRIS H. HUGG (SC, VA, DC)  
JOHN E. GUERRE, III (SC)  
FIDELMA L. FITZPATRICK  
(RI, MA, NY, DC)  
CHRISTY M. DELUCA (SC, IL, CO)  
SUZANNE LAFLEUR KLOK  
(SC, DC, LA, TX, NM)  
CINDY ANNE SOLOMON (SC)  
WILLIAM MICHAEL GRUNDSON (SC)  
DAVID B. BEYON (SC)  
WALTER F. HARRIS, III (SC)  
LAURA N. KHARE (SC)  
MICHAEL E. ELENER (SC, VA, NY)  
VINCENT L. GREENE, IV (RI)  
MARLON E. KIMMONS (SC)  
STACIS F. TAYLOR (AL, MS)  
J. INGRID L. MOLL (CT)  
CAROLINE A. BERNARD (SC, LA)  
ELIZABETH C. WARD (SC, NC)  
SCOTT M. GALLANTY (LA)  
KIMBERLY D. BARNES (SC, CA)  
ELIZABETH SMITH (SC)  
JAMES W. LESLIE (SC)  
MICHAEL G. ROUSSEAU (RI, CA, MA)  
LYNN SEITHEL JERRE (SC)  
BUDGE HUMPHRIES (SC, TX)  
AILEEN L. SPRAGUE (RI)  
JOHN A. BADEN, IV (SC)  
E. CLAIRE KIDH (SC, NY, DC)  
WILLIAM E. APPELGATE, IV (SC)  
JUSTIN B. KAPLAN (TX)  
ANGAIL B. WALSH (SC)

September 24, 2004

The National Transportation Safety Board  
Attention: FOIA Officer, RE-51  
490 L'Enfant Plaza, S.W.  
Washington, DC 20594-2000

To Whom It May Concern:

This is a request pursuant to 5 USC 552 and 28 CFR Part 16, to the National Transportation Safety Board. I am an attorney representing Plaintiffs in the September 11 civil suit, *Burnett, et al. v. al Baraka Investment, et al.*, Case Number 1:02CV01616 and Plaintiffs in September 11 Litigation Civil Action No. 21 MC 97 (AKH).

### Specific Requests

I am requesting copies of the flight data recorders (FDR) for AA Flight 77 and UA Flight 93 as well as the cockpit voice runs (CVR) for UA Flight 93 that are kept in the NTSB CVR/FDR vault. I would like to request all reports generated concerning these FDR's and CVR.

In addition, I would like to request the following reports:

- NTSB report, "Specialist's Factual Report of Investigations-Digital Flight Data Record" for United Airlines Flight 93, believed to be dated 2/15/02.
- NTSB report "Specialist's Factual Report of Investigations-Digital Flight Data Record" for United Airlines Flight 175, believed to be dated 2/15/02.
- NTSB report, "Specialist's Factual Report of Investigations-Digital Flight Data Record" for American Airlines Flight 11, believed to be dated 2/15/02.

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NEW ORLEANS, LA 70112  
504-586-1700  
504-586-1810 FAX

HARTFORD  
100 CANTON STREET  
HARTFORD, CT 06103  
860-725-1700  
860-725-1700 FAX

- NTSB report, "Specialist's Factual Report of Investigations-Digital Flight Data Record" for American Airlines Flight 77, believed to be dated 2/15/02.
- NTSB report, "Air Traffic Control Recording" for United Airlines Flight 93, believed to be dated 12/21/01.
- NTSB report, "Air Traffic Control Recording" for United Airlines Flight 175, believed to be dated 12/21/01.
- NTSB report, "Air Traffic Control Recording" for American Airlines Flight 11, believed to be dated 12/21/01.
- NTSB report, "Air Traffic Control Recording" for American Airlines Flight 77, believed to be dated 12/21/01.
- NTSB report, "Flight Path Study" for United Airlines Flight 93, believed to be dated 2/19/02.
- NTSB report, "Flight Path Study" for United Airlines Flight 175, believed to be dated 2/19/02.
- NTSB report, "Flight Path Study" for American Airlines Flight 11, believed to be dated 2/19/02.
- NTSB report, "Flight Path Study" for American Airlines Flight 77, believed to be dated 2/19/02.

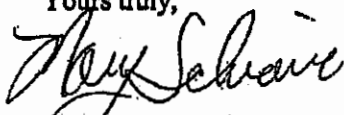
Materials and Shipment

If you deny all or part of this request, please cite the specific exemptions you believe justify your refusal to release the information and notify me of your appeal procedures available under law. In excising material, please "black out" rather than "white out" or "cut out." Please respond to this request within 20 working days as provided for by law.

I agree to pay whatever fees are incurred to complete this request. However, I request that prior to your incurring any fees in excess of \$1000 that I be advised of the total estimate.

Thank you for your consideration in this matter.

Yours truly,

  
Mary Schiavo



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**National Transportation Safety Board**  
Washington, D.C. 20594

October 15, 2004

Ms. Mary Schiavo  
Motley & Rice, LLC  
28 Bridgeside Blvd.  
P.O. Box 1792  
Mt. Pleasant, South Carolina 29465

Re: Freedom of Information Act (FOIA) Request  
FOIA # 20050013

Dear Ms. Schiavo:

This acknowledges receipt of your FOIA request of September 24, 2004, concerning an aviation accident that occurred on September 11, 2001 in Arlington, Virginia.

Your request will be processed in accordance with your inquiry. Please refer to the FOIA number listed above to inquire about the status of your request.

NTSB FOIA Office (RE-51)  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
(202) 314-6540

sr

**RECEIVED**

**OCT 18 2004**

MotleyRice/MLP

**RECEIVED**

**OCT 16 2004**

MotleyRice/MLP





**National Transportation Safety Board**  
Washington, D.C. 20594

October 15, 2004

Ms. Mary Schiavo  
Motley & Rice, LLC  
28 Bridgeside Blvd.  
P.O. Box 1792  
Mt. Pleasant, South Carolina 29465

Re: Freedom of Information Act (FOIA) Request  
FOIA # 20050014

Dear Ms. Schiavo:

This acknowledges receipt of your FOIA request of September 24, 2004, concerning an aviation accident that occurred on September 11, 2001 in Shanksville, Pennsylvania.

Your request will be processed in accordance with your inquiry. Please refer to the FOIA number listed above to inquire about the status of your request.

NTSB FOIA Office (RE-51)  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
(202) 314-6540

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**RECEIVED**

**OCT 18 2004**

MotleyRice/MLP

**RECEIVED**

**OCT 16 2004**

MotleyRice/MLP



**National Transportation Safety Board**  
Washington, D.C. 20594

October 15, 2004

Ms. Mary Schiavo  
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Mt. Pleasant, South Carolina 29465

Re: Freedom of Information Act (FOIA) Request  
FOIA # 20050015

Dear Ms. Schiavo:

This acknowledges receipt of your FOIA request of September 24, 2004, concerning an aviation accident that occurred on September 11, 2001 in New York city, New York.

Your request will be processed in accordance with your inquiry. Please refer to the FOIA number listed above to inquire about the status of your request.

NTSB FOIA Office (RE-51)  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
(202) 314-6540

sr

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OCT 18 2004  
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OCT 16 2004  
MotleyRice/MLP



**National Transportation Safety Board**  
Washington, D.C. 20594

October 15, 2004

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Mt. Pleasant, South Carolina 29465

Re: Freedom of Information Act (FOIA) Request  
FOIA # 20050016

Dear Ms. Schiavo:

This acknowledges receipt of your FOIA request of September 24, 2004, concerning an aviation accident that occurred on September 11, 2001 in New York City, New York.

Your request will be processed in accordance with your inquiry. Please refer to the FOIA number listed above to inquire about the status of your request.

NTSB FOIA Office (RE-51)  
490 L'Enfant Plaza East, S.W.  
Washington, D.C. 20594  
(202) 314-6540

ST

**RECEIVED**

**OCT 18 2004**

MotleyRice/MLP

**RECEIVED**

**OCT 16 2004**

MotleyRice/MLP



Michael E. Elsner  
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February 23, 2006

Ms. Lyn Donaldson  
Chief FOIA Officer  
National Transportation Safety Board  
490 L'Enfant Plaza, SW  
Washington, DC 20594

Re: Freedom of Information Act ("FOIA") Requests #20050013 - 20050016

Dear Ms. Donaldson:

I write to inquire about the status of four pending Freedom of Information Act ("FOIA") requests before the National Transportation Safety Board ("NTSB"). On September 24, 2004, Mary Schiavo, Esq., of Motley Rice LLC requested reports, flight data recorder information and cockpit voice runs concerning the four flights hijacked on September 11, 2001 (a copy of our initial request is attached as Exhibit A). On October 15, 2004, the NTSB acknowledged our request by letter, separating the request into four reference numbers (one for each flight). We were informed that the request would be "processed in accordance with your inquiry" (see NTSB correspondence attached as Exhibit B). We have not received any further communication from the NTSB in the interim.

Pursuant to 5 U.S.C. § 552 (6)(A)(i), an agency must "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefore, and of the right of such person to appeal to the head of the agency any adverse determination." Even under "unusual circumstances" (5 U.S.C. § (6)(B)(i)), an extension of no more than ten working days is allowed. Requestors never received any indication from the NTSB that "unusual circumstances" existed. In any event, the agency's delayed response has far exceeded the statutory deadline.

Counsel has attempted on two occasions in the last week to contact the NTSB's FOIA office concerning the status of the aforementioned requests. The NTSB has failed to return messages on both occasions. We have no choice but to construe further silence as a negative determination and will pursue litigation according to the law.

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Attorneys at Law



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HARTFORD, CT 06103  
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860-882-1682 FAX

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February 23, 2006

Should you have any questions regarding this letter, please feel free to contact me at any time by phone at (843) 216-9250. Thank you for your consideration in this matter.

Very truly yours,



Michael Elsner